IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15461 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMDEVSINH NALDEVSINH SARVAIYA - Petitioner(s)

Versus

DISTRICT MAGISTRATE-BHAVNAGAR & 2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 13/09/2005

ORAL JUDGMENT

1. The order of detention dated 01st July, 2005 passed by the District Magistrate, Bhavnagar is challenged by the detenue who is detained under Section 3(2) (b) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, 'the PASA Act'), with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order in the area. Alongwith the order of detention, the detenue was also supplied the grounds of detention and it refers to the antisocial and criminal activities pertaining to the foreign made illegal liquor in the area of Talaja Taluka. It mentions about the registration of crimes under the provisions of Bombay Prohibition Act, 1951 and statements of some witnesses about incriminating activities of the detenue. The Detaining Authority has after considering the

above aspects arrived at subjective satisfaction that remedy under ordinary law is not sufficient and the petitioner is required to be detained under this Act so as to prevent him from indulging into such activities in future.

2. The aforesaid order of detention is challenged by the petitioner on various grounds i.e. delay in passing the order of detention for about 2 months, since the last offence was registered on 05.05.2005 and the impugned order is passed on 1st July, 2005, therefore, substantial time has elapsed, according to the learned advocate for the petitioner in passing the order of detention, which is illegal and order of detention is required to be quashed and set aside.

It is also submitted that there are other grounds about disturbance of the public order

by prejudicial activities of the detenue and also privilege claimed under Section 9(2) by the Detaining Authority is not genuine and reasonable and lastly, though the representation submitted by the detenue dated 18th July, 2005 was already received by the office of the Detaining Authority on 21st July, 2005, as per the acknowledgment receipt produced at ANNEXURE-E to the petition, the detaining authority has forwarded the same to the State government on 25th July, 2005.

Therefore, according to the learned advocate for the petitioner the delay which has caused in forwarding the representation tot the State Authority by the Detaining Authority remains unexplained and therefore also the order of detention stands vitiated depriving the effective remedy to the detenue. However, the first ground as urged by the learned advocate for the petitioner is pressed into

service to quash and set aside the order of detention. Therefore, further grounds are not discussed and dealt with while adjudicating the validity of the order of detention.

3. The learned Assistant Government Pleader Smt. Hansha B. Punani has submitted and justified that the order of detention is passed by the detaining authority after detailed scrutiny and verification of the secrete witnesses, and their statements and it is explained reasonably in the affidavit in reply. She has also submitted that in the above circumstances there is no delay in passing the order of detention and it is to be upheld by this Court.

4. Having considered the rival submissions and on perusal of the records including the affidavit in reply, I am inclined to accept the grounds based on the submissions that there is a delay

of about 2 months in passing the order of detention by the detaining authority, since the last offence came to be registered on 5th May, 2005 and the order of detention is passed on 1st July, 2005. The explanation by the detaining authority is that the detenue was arrested pursuant to the offence registered on 5th May, 2005, on 7th June, 2005 and the chargesheet was also filed on the same day. Thereafter it was necessary to collect the materials and to record the statements of witnesses in unregistered offences and, therefore, the proposal was submitted on 23rd June, 2005.

5. The above explanation is nothing but an eye-wash since chargesheet is already filed on 7th June, 2005, and, there was no justification for collecting another materials, once the chargesheet is submitted. Even for verification of statements of witnesses and for ascertaining genuineness and correctness of such statements

further time is taken of about 20 days and the same cannot be said to be reasonable.

In the above mentioned facts and the stand taken by the deponent in the affidavit in reply it is evident that there is a delay in passing the order of detention vide order dated 1st July, 2005 which is not reasonably explained and it has resulted into deprivation of the detenue of his right to life and liberty. This ground of inordinate delay in passing the order of detention is sufficient enough to quash and set aside the order of detention passed against the accused, and, therefore, other grounds of delay in considering the representation dated 18th July, 2005 by the detaining authority and disturbance of public order are not gone into.

6. For the reasons mentioned hereinabove, the order of detention dated 1st July, 2005 is quashed and set aside and the detenue

Ramdevsinh Naldevsinh Sarvaiya is ordered to be set at liberty forthwith if he is not required in any other offence by any other authority. Rule is made absolute with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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